IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10564 OF 2004

Smt. Sarubai Raghu Pokale & Ors. ... ... Petitioners.

Versus

Bajirao Mahadu Pokale & Ors. ... . Respondents.

Mr. S. V. Sadavarte for the Petitioners.
None for the Respondents.

CORAM: S. A. BOBDE, J.

DATED : MARCH 1, 2005.

P.C. :

The petitioners are defendant Nos.4 to 8 in a suit for partition filed by the respondents.

2. The petitioners applied for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure on the ground that

the issue of partition has already been dealt with in an earlier suit and that all the properties have been partitioned and therefore there is no cause of action for the present suit. This application has been rejected by the trial Court by making the following observations:

> "It is pertinent to note that in present suit plaintiff submitted all their ancestral and joint family property along with house property in schedule. It is pertinent to note that as per schedule of suit, it clearly shows that Tahsildar Haveli not made partition of all suit property. So, it clearly shows that Tahsildar-Haveli made partition only few ancestral property and not all ancestral property as well as joint family property of plaintiff and defendant."

3. Mr. Sadavarte, learned Counsel for the petitioners, submitted that this observation shows that the Court has regarded all the properties including the present suit as ancestral property which may amount to pre-judging the question. Learned Counsel

is not right in his submission since this observations are made only for the purpose of deciding the application under Order 7 Rule 11 of the Code of Civil Procedure and do not constitute a finding on any Issue as regards the actual status of the property involved in the present suit. I see no error of law or perversity committed by the trial Court in rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure since apparently certain properties have not been put to partition yet. In this view of the matter, there is no merit in this petition, which is hereby rejected.

Sd/-

S. A. BOBDE, J.